

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Long Distance Consolidated Billing Co.	)	IC No. 08-S0294178
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: November 26, 2008**

**Released: November 28, 2008**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant<sup>1</sup> alleging that Long Distance Consolidated Billing Co. (LDCB) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>2</sup> We conclude that LDCB's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

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<sup>1</sup> Informal Complaint No. IC 08-S0294178, filed July 31, 2008.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997(2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 ; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.<sup>10</sup>

4. We received Complainant's complaint on July 31, 2008, alleging that Complainant's telecommunications service provider had been changed from AT&T to LDCB without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>11</sup> we

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<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120.

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>8</sup> See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

notified LDCB of the complaint and LDCB responded on September 17, 2008.<sup>12</sup> LDCB states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV submitted by LDCB with its response. Although Complainant agreed to switch intraLATA service, the definition of intraLATA service given by the verifiers was not correct.<sup>13</sup> Therefore, because of the incorrect definition, LDCB's actions resulted in unauthorized changes in Complainant's telecommunications service provider.<sup>14</sup>

5. The Commission's rules require both that the subscriber authorizes the change in service and that the telecommunications carrier, through its third party verifier in this situation, obtains separate authorization for each type of service it seeks to provide to the subscriber.<sup>15</sup> We find that LDCB's verifier provided erroneous information when describing the types of services LDCB would provide to Complainant if he or she switched to LDCB. Specifically, LDCB inaccurately defined "intraLATA" toll service such that it included not only intraLATA calls but also interLATA calls. Thus, the subscriber could not effectively authorize the change in intraLATA service.<sup>16</sup> Moreover, by including both intraLATA and inter LATA calls within the single question "d.", we find that LDCB failed to obtain separate authorization for each type service it sought to provide to Complainant.<sup>17</sup>

6. The underlying purpose of the Commission's slamming rules is to ensure that consumers have sufficient information about telecommunications services and providers of such services to make informed decisions when changing those services and providers.<sup>18</sup> Sufficient

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<sup>12</sup> LDCB's Response to Informal Complaint No. IC 08-S0294178, filed September 17, 2008.

<sup>13</sup> The verifier defined intraLATA as instate long distance service. This definition, however, is too broad because instate long distance also includes instate interLATA service. We note that LATA is an acronym for "local access and transport area."

<sup>14</sup> See 47 C.F.R. § 64.1150(d).

<sup>15</sup> See 47 CFR §§ 64.1120(a)(1)(i) and (b).

<sup>16</sup> Specifically, the verifier states:

1. Is it your intention to change your long distance service provider to Long Distance Consolidated Billing Co.
  - a. Do you understand that this includes intrastate, or calls made within the state? Correct?
  - b. This includes interstate, and calls made out of state? Correct?
  - c. This includes international calls? Correct?
  - d. This includes intraLata toll calls, or long distance calls made within the state? Correct?

<sup>17</sup> See 47 CFR § 64.1120(b).

<sup>18</sup> See *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9564 at para. 9 (1995).

information necessarily includes accurate information.<sup>19</sup> LDCB's TPV questions did not provide sufficient information for Complainant to make an informed change of intraLATA service because the definition of intraLATA toll service was inaccurate and confusing. Specifically, LDCB defined intraLATA toll calls as "long distance calls made within the state." This definition is inaccurate because in the states in which the services at issue were received, long distance calls made within each state can also be interLATA calls.<sup>20</sup> Therefore because of the inaccurate and confusing language in the TPV, Complainant cannot be deemed to have authorized the change of intraLATA service.

7. Moreover, LDCB also violated section 64.1120(b) of the Commission's rules. That provision requires telecommunications carriers offering more than one type of telecommunications service to "obtain separate authorization from the subscriber for each service sold."<sup>21</sup> As explained above, LDCB included within its description of intraLATA toll service both intraLATA toll and interLATA toll services. Therefore, question "d" sought to obtain the subscriber's authorization for a switch both in the subscriber's intraLATA toll and interLATA toll services. As such LDCB did not obtain a separate authorization for intraLATA service in violation of section 64.1120(b) of the Commission's rules.

8. Based on the foregoing, we find that LDCB has failed to produce clear and convincing evidence of valid authorized changes by Complainants. Therefore, we find that LDCB's actions resulted in unauthorized change in Complainant's telecommunications service, and we discuss LDCB's liability below.<sup>22</sup>

9. Pursuant to Section 64.1170(b) our rules, LDCB must forward to AT&T an amount equal to 150% of all charges paid by the subscriber to LDCB along with copies of any telephone bills issued from LDCB to the Complainant.<sup>23</sup> Within ten days of receipt of this amount, AT&T shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to LDCB. Complainant has the option of asking AT&T to re-rate LDCB charges based on AT&T rates and, on behalf of Complainant, seek from LDCB, any re-rated amount exceeding 50% of all charges paid by Complainant to LDCB. AT&T must also send a notice to the Commission, referencing this Order, stating that it has given a refund or

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<sup>19</sup> See *id.* at 9586, para. 15 (In explaining why the Commission's new slamming rules do not violate the First Amendment, the Commission stated that the rules "require that the carriers' [speech used to switch consumers] not confuse or mislead the consumer.").

<sup>20</sup> The state in which Complainant receives the services at issue compromises more than one LATA and, thus, Complainant could make long distance calls within his or her state that are interLATA calls.

<sup>21</sup> 47 C.F.R. § 64.1120(b).

<sup>22</sup> If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

<sup>23</sup> See 47 C.F.R. § 64.1170(b)(1)(2).

credit to Complainant.<sup>24</sup> If AT&T has not received the reimbursement required from LDCB within 45 days of the release of this Order, AT&T must notify the Commission and Complainant accordingly. AT&T also must notify the Complainant of his or her right to pursue a claim against LDCB for a refund of all charges paid to LDCB.<sup>25</sup>

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against LDCB Corporation IS GRANTED.

11. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that LDCB must forward to AT&T an amount equal to 150% of all charges paid by the subscriber along with copies of any telephone bills issued from the company to the Complainant within ten (10) days of the release of this order.

12. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

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<sup>24</sup> See 47 C.F.R. § 64.1170(c).

<sup>25</sup> See 47 C.F.R. § 64.1170(e).